IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.833 of 2003

Natesan Pillai .. Petitioner

vs.

Radhakrishan .. Respondent

Revision Petition filed against the order dated 26.12.2002 made in O.S.No.68/1948 as amended by O.S.No.17/1960, on the file of the Principal Sub Court (Scheme Court), Mayiladuthurai.

For Petitioner : Mr.S.Sounthar
For Respondent : Mr.T.R.Rajagopalan, Senior counsel, for Mr.A.Muthukumar.

ORDER:

This Revision Petition has been filed against the order dated 26.12.2002 made in O.S.No.68/1948 as amended by O.S.No.17/1960, on the file of the Principal Sub Court (Scheme Court), Mayiladuthurai.

2.The appointment of the respondent as a trustee of A.V.Charities in the vacancy caused by one Thiru Sethuraman by the scheme court on 26.12.2002 in O.S.No.68/1948 as amended by O.S.No.17/1960 by the Principal Sub Court, Mailadudurai (scheme court) has been challenged by the revision petitioner in this Civil Revision petition.

3.A.V.Charities, Myladudhurai is a Trust governed by a scheme decree made in O.S.No.68/1948 as amended in O.S.No.17/1960 on the file of the Principal Sub-Judge, Myladudhurai. The management of the trust vest in a Board of trustees consisting of 6 trustees. While appointing the trustees to the Board, the members of the original 5 families which gave the original endowment, namely, (1)Anbanathapuram family, (2) Pallavarayanpettai family, (3)Enathimangalam family (4)Karukudi family and (5) Kanganaputhur family are to be appointed as far as possible.

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4.Out of the 6 posts of trustees 4 became vacant during the relevant time. In those 4 vacancies people from Anbanathapuram, Karukudi, Pallavarayanpettai and kanganaputhur families were holding the posts of trustees before they became vacant. Therefore 4 trustees were to be appointed and the chairman of the trustees wrote letters to the scheme court requesting the court to fill up the 4 vacancies. A requisition was made by the Chairman in his letter dated 6.4.2002 requesting the scheme court to consider the vacancy occupied by Thiru K.Sethuraman belonging to Karukudi family as a general vacancy instead of a vacancy for the Karukudi family. This request dated 6.4.2002 was rejected by the scheme court by its letter dated 8.4.2002. Thereafter the scheme court after going through the application submitted by the eligible candidates appointed 4 trustees, belonging to the 4 families in its order dated 26.12.2002.

5.The respondent herein was appointed as a trustee by the scheme court on behalf of Karukudi family and this appointment alone was challenged before this court by the petitioner alone, who also submitted an application to consider him for the appointment of trustee in the place of Thiru K.Sethuraman who was holding the post earlier.

6.Heard the learned counsel for the petitioner and Mr.T.R.Rajagopalan, learned Senior Counsel for the respondent. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

7.The learned counsel for the petitioner submitted that the scheme court is wrong in considering the vacancy as a vacancy belonging to Karukudi family and rejecting the application of the petitioner. He relied on the earlier decision of this court with respect to very same trust made in C.R.P.No.448/1998 dated 23.2.98.

8.Per contra, Mr.T.R.Rajagopalan, the learned Senior Counsel for the respondent submitted that the scheme court has correctly appointed the respondent as the trustee and there is no illegality in his appointment. He further submitted that having not challenged the order of the scheme court dated 8.4.2002 rejecting the request of the Chairman of the Board to treat the vacancy as a general vacancy, it is not open to the petitioner to challenge the order of the scheme court now. The learned Senior Counsel also drew support from the very same decision dated 23.2.98 made in C.R.P.No.448/98.

9.I have considered the rival submissions carefully with regard to facts and citations.

10.By its order dated 26.12.2002 the scheme court appointed 4 trustees in the existing vacancies and the appointment of the respondent alone is challenged before this court by the petitioner. It is his case that already a trustee is very much there representing Karukudi family and

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therefore the vacancy caused after the period of Thiru K.Sethuraman should have been considered as general vacancy.

11.I am unable to accept the contentions raised by the petitioner.

12.It is not in dispute that a request was made by the Chairman of the Board by letter dated 6.4.2002 requesting the scheme court to treat the vacancy caused by the efflux of time of membership of Thiru K.Sethuraman as general or common vacancy. The scheme court by its letter dated 8.4.2002 rejected this request by informing that even though Thiru V.Arunachalam belonging to Karukudi family was appointed as a trustee, he was appointed in the common vacancy and therefore the present vacancy has to be considered only from the Karukudi family. As rightly pointed out by the learned Senior counsel, this letter was not at all challenged by the petitioner herein at the appropriate time and having not done so it is not now open for him to challenge the appointment of the respondent made by the scheme court.

13.On the basis of the letter dated 8.4.2002 the scheme court considered only the applicants who belonged to Karukudi family. As the revision petitioner did not belong to the Karukudi family the scheme court rejected his application and considered the other applicants and finally appointed the respondent herein as the trustee. The petitioner herein belonged to Pallavarayanapettai family and the scheme court in the very same order dated 26.12.2002 appointed one Thiru R.Sajjal, S/o.Sri Rammohan Shanmugam as a trustee belonging to Pallavarayanpettai family. Therefore it cannot be said that by appointing the respondent herein as a trustee there was no representation for the pallavarayanpettai family. The petitioner was appointed as a trustee belonging to pallavarayanpettai family by the scheme court on 21.4.1997 along with R.Sethuraman. But the revision petitioner resigned from the post of trusteeship by his letter dated 2.11.2001 and the same was accepted by the scheme court by its order dated 5.11.2001 and in his place Thiru V.Arunachalam was appointed as a member of the Board of Trustees. When the petitioner was holding the post of trusteeship S.Alagesan was also holding the post of trusteeship representing Pallavarayanpettai family. Therefore considering the fact that there are 6 posts and only five families, there is always a possibility of one family getting two posts.

14.In CRP.No.448/98, the revision petitioner's appointment as a trustee by the scheme court by its order dated 21.4.97 was challenged before this court by one C.Senthilvel, on the ground that the Pallavarayanpetta family was already represented by one Alagesan and therefore the present revision petitioner's appointment, who also belongs to very same Pallavarayanpettai family was bad. While rejecting the contentions of the revision petitioner in CRP No.448/98, this court by order dated 23.2.98 held that a reading of clause 5(c) of the scheme makes it clear that the scheme court shall proceed to call for applications and make appointments to the vacancies and give regard to the representation

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of the original 5 families and the scheme court is given the discretion to take note of the efficient administration while giving representation to each family.

15.In the light of the above discussions and the decision of this court made in CRP No.448/98, I do not find any infirmity in the order of the scheme court dated 26.12.2002 by appointing the respondent as a trustee of A.V.Charities.

16.Hence I find no merits in this Civil Revision Petition and the same is dismissed. No costs. C.M.P.No.8773/2003 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To
1. The Principal Subordinate Judge,
The Principal Sub Court[Scheme Court]
Mayiladuthurai.

2. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr. S.Sounthar, Advocate SR NO.32983

+ 1 CC To Mr. A.Muthukumar Advocate SR NO.31847

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